

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
Creation of a Low Power Radio Service)	MB Docket No. 99-25
And)	
Translator Auction)	AUC-03-83-B (Auction 83)
)	

To: The Commission

EMERGENCY MOTION TO DISMISS

Emergency Petition
For Freeze on Pending FM Translator Applications

Edgewater Broadcasting, Inc. (“EB”), Radio Assist Ministry, Inc. (“RAM”), and World Radio Link, Inc. (“WRL”) (collectively, the “Ministries”) hereby ask the Commission to dismiss the Emergency Petition For Freeze on Pending FM Translator Applications (the “Petition”) filed by Media Access Project on behalf of Prometheus Radio Project, REC Networks, Office of Communication of the United Church of Christ, Inc. (“UCC”), National Federation of Community Broadcasters, Future of Music Coalition, Free Press, Center on Democratic Communication of the National Lawyers Guild, and New America Foundation (collectively, “Petitioners”) on March 9, 2005.

The Petitioners’ pleading, styled an “Emergency Petition for Freeze on Pending FM Translator Applications,” amounts to little more than a cleverly disguised petition to deny the pending applications for new FM translators properly filed in the FM Translator window in Auction 83 by EB and RAM, as well as numerous other unnamed FM

Translator applicants.¹ The Petition must be dismissed. The Petition fails to make a *prima facie* case that the grant of any or all of the pending FM Translator applications is inconsistent with Section 309(a) of the Act, 47 U.S.C. § 309(a), nor does it raise a substantial and material question of fact regarding the qualifications or actions of the Ministries. *See* 47 U.S.C. § 309(d). In fact, the Petition admits that, “the evidence gathered so far does not indicate that any individual transaction broke any specific rule...” Petition at 1. The Petition cites no wrongdoing whatsoever by the Ministries. It resorts instead to wild speculation impugning the character, motives, and methods of the Ministries and their principals. Petitioners’ hyperbole, conjecture, and histrionics do not amount to a scintilla of evidence of wrongdoing. The Petition lacks any specific allegation that would raise a material question of fact as to whether the Ministries violated the Act or any rule or regulation of the Commission. Thus, the Petition must be dismissed on its face.²

By citing the Public Notice AUC-03-83-B, Petitioners are apparently attempting to give their pleading the appearance of propriety. However, the Petition is severely untimely in that petitions to deny the singleton applications were due within 15 days of the release of the Public Notice accepting the applications for filing. Petitioners failed to

¹ The Petition was not served on the Ministries nor, to the best of our knowledge, any other applicant for a new FM translator, in clear violation of Section 309(d) of the Communications Act (the “Act”). 47 U.S.C. § 309(d).

² On March 10, 2005, merely one day after filing the Petition, former Commissioner Gloria Tristani violated the Commission’s *ex parte* rules by contacting sitting Commissioners urging an immediate vote on a decision in Docket 99-25 and discussing the Petition. *See ex parte* notices filed on March 10, 2005, attached hereto. Such contacts are forbidden in the context of applications under Title III of the Act. *See* 47 C.F.R. §1.1208. Ms. Tristani and UCC should be reprimanded, barred from further participation in Docket 99-25, and any information provided to the Commission in this Docket by Ms. Tristani and/or UCC stricken from the record. *See* 47 C.F.R. § 1.1216.

timely file against any EB and/or RAM FM translator application during the applicable petition to deny period. Thus, the Petition must also be dismissed as untimely.³

To the extent that the Petition seeks to cease processing of all FM translator applications filed in the Auction 83 Window as an improper use of spectrum reserved for LPFM facilities, Petition at 10-11, the pleading is tardy by more than two years! The Public Notice announcing the FM Translator Window in Auction 83 was released on February 6, 2003.⁴ The fact that Petitioners do not like the outcome of the filing window does not now allow them to throw administrative procedure to the wind. The Petition must also be dismissed as an untimely petition for reconsideration of the February 6, 2003 Public Notice.⁵

The recklessness of the unsubstantiated allegations put forth in the Petition cannot be underscored. Should the Commission fail to dismiss the Petition, then it must at a minimum: a) set a pleading cycle to permit the Ministries to fully respond to these spurious allegations, and b) allow all other interested parties a full and fair opportunity for notice and comment on the LPFM issues raised in the Petition not previously subject

³ The Petition also fails to demonstrate that Petitioners are parties in interest to the pending FM translator applications and fails to provide affidavits of persons with personal knowledge supporting the allegations in contravention of Section 309(d)(1), 47 U.S.C. § 309(d)(1).

⁴ Public Notice, FM Translator Auction Filing Window and Application Freeze, DA 03-359, Released February 6, 2003, Report No. AUC-03-83-A (Auction 83) (the "February 6, 2003 Public Notice").

⁵ Whether the Petition is meant to be a petition to deny the FM Translator applications or a petition for reconsideration of the February 6, 2003 Public Notice, in any event it is untimely and the Petition fails to state any cause for the untimeliness.

to notice and comment.⁶ The Ministries, as well as the other FM Translator applicants subject to the proposed freeze, must be afforded due process and the opportunity to respond to the Petition. *See* 47 U.S.C. § 309(d).

As demonstrated above, the Petition fails to raise a substantial and material question of fact with respect to the Ministries actions in Auction 83 and is untimely and procedurally defective. Thus, Edgewater Broadcasting, Inc., Radio Assist Ministry, Inc., and World Radio Link, Inc. respectfully request that the Commission promptly dismiss the Petition.

Respectfully Submitted,



Dawn M. Sciarrino
Counsel to Edgewater Broadcasting,
Inc., Radio Assist Ministry, Inc. and
World Radio Link, Inc.

Sciarrino & Associates, PLLC
5425 Tree Line Drive
Centreville, VA 20102
www.sciarrinolaw.com

(703)830-1679
(703)991-7120 (fax)

March 14, 2005

⁶ The Commission cannot vote on any decision related to Docket 99-25 until the Petition is dismissed or until the matters raised in the Petition have been fully briefed before the Commission and proper notice and comment periods have been provided with respect to the issues not previously raised in the Notices of Rulemaking in this Docket.



919 18th Street, NW, 9th Floor
Washington, DC 20006

VIA ELECTRONIC FILING

March 10, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: In the Matter of Creation of Low Power Radio Service, MB Docket No.
99-25

And Translator Auction, AUC-03-83-B (Auction No. 83).

Dear Ms. Dortch:

We submit this notice regarding an *ex parte* telephone meeting in the above referenced proceedings pursuant to Section 1.206(b)(2) of the Commission's rules.

On March 9, 2005, Gloria Tristani, Managing Director of the Office of Communications of the United Church of Christ, Inc. (OC, Inc.) had a telephone conference with Commissioner Michael J. Copps. Ms. Tristani described the importance and urgency of voting an item regarding low power radio service in MB Docket No. 99-25. Ms. Tristani also discussed an Emergency Petition For Freeze On Pending FM Translator Applications that OC, Inc. and other low power radio advocates would be filing later in the day.

This notice is being filed electronically in the above referenced dockets in accordance with FCC rules. Please do not hesitate to contact me at 202 263-2586 if you have any questions regarding this filing.

Very truly yours,

/s/

Gloria Tristani

Office of Communication of the United Church of Christ, Inc.



919 18th Street, NW, 9th Floor
Washington, DC 20006

VIA ELECTRONIC FILING

March 10, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: In the Matter of Creation of Low Power Radio Service, MB Docket No.
99-25

And Translator Auction, AUC-03-83-B (Auction No. 83).

Dear Ms. Dortch:

We submit this notice regarding an *ex parte* telephone meeting in the above referenced proceedings pursuant to Section 1.206(b)(2) of the Commission's rules.

On March 10, 2005, Gloria Tristani, Managing Director of the Office of Communications of the United Church of Christ, Inc. (OC, Inc.) had a telephone conference with Commissioner Jonathan S. Adelstein. Ms. Tristani described the importance and urgency of voting an item regarding low power radio service in MB Docket No. 99-25. Ms. Tristani also discussed the Emergency Petition For Freeze On Pending FM Translator Applications that OC, Inc. and other low power radio advocates filed later on March 9, 2005.

This notice is being filed electronically in the above referenced dockets in accordance with FCC rules. Please do not hesitate to contact me at 202 263-2586 if you have any questions regarding this filing.

Very truly yours,

/s/

Gloria Tristani
Office of Communication of the United Church of Christ, Inc.



919 18th Street, NW, 9th Floor
Washington, DC 20006

VIA ELECTRONIC FILING

March 10, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: In the Matter of Creation of Low Power Radio Service, MB Docket No.
99-25

And Translator Auction, AUC-03-83-B (Auction No. 83).

Dear Ms. Dortch:

We submit this notice regarding an *ex parte* telephone meeting in the above referenced proceedings pursuant to Section 1.206(b)(2) of the Commission's rules.

On March 10, 2005, Gloria Tristani, Managing Director of the Office of Communications of the United Church of Christ, Inc. (OC, Inc.) had a telephone conference with Commissioner Kathleen Q. Abernathy. Ms. Tristani described the importance and urgency of voting an item regarding low power radio service in MB Docket No. 99-25. Ms. Tristani also discussed the Emergency Petition For Freeze On Pending FM Translator Applications that OC, Inc. and other low power radio advocates filed on March 9, 2005.

This notice is being filed electronically in the above referenced dockets in accordance with FCC rules. Please do not hesitate to contact me at 202 263-2586 if you have any questions regarding this filing.

Very truly yours,

/s/

Gloria Tristani
Office of Communication of the United Church of Christ, Inc.

Certificate of Service

I, Dawn M. Sciarrino, a member of the Bar of the District of Columbia, hereby state under penalty of perjury that a copy of the foregoing Emergency Motion to Dismiss was served on the following parties by prepaid postage in the United States Mail on March 14, 2005.

March 14, 2005

Dawn M. Sciarrino

Harold Feld
Andrew Jay Schwartzman
Media Access Project
1625 K Street, NW
Suite 1000
Washington, DC 20006
Counsel to:
Prometheus Radio Project
REC Networks
Office of Communication of the United Church of Christ, Inc.
National Federation of Community Broadcasters
Future of Music Coalition
Free Press, Center on Democratic Communication of the National Lawyers Guild
New America Foundation

Chairman Michael K. Powell*

Commissioner Kathleen Q. Abernathy*

Commissioner Michael J. Copps*

Commissioner Kevin J. Martin*

Commissioner Jonathan S. Adelstein*

cc: Jon Cody*
Bryan Tramont*
Matthew Brill*
Jordan Goldstein*
Catherine Crutcher Bohigian*
Eric Bash*

* via e-mail